

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Team # 1	CCRB Case #: 201307652	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/21/2013 12:50 AM	Location of Incident: Vernon Boulevard and 36th Avenue	Precinct: 114	18 Mo. SOL 2/21/2015	EO SOL 2/21/2015	
Date/Time CV Reported Wed, 08/21/2013 12:05 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/21/2013 12:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Kimberly Washington	01693	928232	114 PCT
2. POM Phillip Leroy	09713	947790	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Kimberly Washington	Abuse: PO Kimberly Washington stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Phillip Leroy	Abuse: PO Phillip Leroy stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Phillip Leroy	Abuse: PO Phillip Leroy frisked § 87(2)(b)	
D.POF Kimberly Washington	Abuse: PO Kimberly Washington frisked § 87(2)(b) and § 87(2)(b)	
E.POM Phillip Leroy	Abuse: PO Phillip Leroy searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	

### Case Summary

On August 21, 2013, § 87(2)(b) filed this complaint over the phone with the CCRB, on behalf of her grandson, § 87(2)(b) and his friends § 87(2)(b) and § 87(2)(b). § 87(2)(b) was not present for the incident (encl. B 1-2).

On August 21, 2013, at approximately 12:50 a.m., § 87(2)(b) and § 87(2)(b) were pulled over by PO Kimberly Washington and PO Phillip Leroy, both assigned to the 114<sup>th</sup> Precinct, at the intersection of Vernon Boulevard and 36<sup>th</sup> Avenue, in Queens. The following allegations of misconduct were made:

- **Allegation A – Abuse of Authority: PO Kimberly Washington stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

- **Allegation B – Abuse of Authority: PO Phillip Leroy stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

- **Allegation C – Abuse of Authority: PO Phillip Leroy frisked § 87(2)(b)**
- **Allegation D – Abuse of Authority: PO Kimberly Washington frisked § 87(2)(b) and § 87(2)(b)**

- **Allegation E – Abuse of Authority: PO Phillip Leroy searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

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This case was originally assigned to Inv. Nicholas Milyadis. It was reassigned to the undersigned investigator on March 4, 2014, due to Inv. Milyadis' departure from the agency.

### Results of Investigation

#### Civilian Statements

**Victim:** § 87(2)(b)

- § 87(2)(b) is a black male, 6'3", 250 lbs, with black hair and brown eyes. At the time of the incident, he was § 87(2)(b) old and § 87(2)(b).

#### CCRB Statement

On September 4, 2013, § 87(2)(b) provided a phone statement (encl. B 3), and on September 17, 2013, he was interviewed by the CCRB (encl. B 4-9). § 87(2)(b) was called on February

11, 2014, and June 16, 2014, and answered follow up questions (encl. B 10-10a). § 87(2)(g)

On August 21, 2013, at approximately 12:50 a.m., § 87(2)(b) was riding in the front passenger seat of the car belonging to his friend § 87(2)(b) in the vicinity of Vernon Boulevard and 36<sup>th</sup> Avenue, in Queens. § 87(2)(b) was driving the car, a black Nissan four door sedan. The car did not have tinted windows, as they had been removed prior to the incident date. § 87(2)(b) was in the back seat. § 87(2)(b) was wearing blue sweatpants, a plain black t-shirt, and gray sneakers.

They stopped at a store on 40<sup>th</sup> Avenue near Vernon Boulevard, across the street from the northern edge of the Queensbridge North Houses. § 87(2)(b) got out of the car and went inside the store, while § 87(2)(b) and § 87(2)(b) stayed in the car. After § 87(2)(b) returned, they drove down Vernon Avenue to 36<sup>th</sup> Avenue, where they made a left turn onto the Roosevelt Bridge. Immediately after they made the turn, an unmarked gray car behind them turned on police lights and sirens. § 87(2)(b) had not committed any traffic infractions that § 87(2)(b) was aware of.

The unmarked car stopped behind them and two officers approached; PO Kimberly Washington, identified by the investigation and described as a black female, in plainclothes, 5'4"-5'5" tall, heavy set, with short hair and glasses, in her mid-30's; and PO Phillip Leroy, identified by the investigation and described as a black or dark skinned Hispanic male, in plainclothes, 6'0" – 6'1" tall, with a slim build, short hair and a goatee. The only movements § 87(2)(b) and the others made was occasionally looking back at the police car. § 87(2)(b) did not reach to any parts of the car.

PO Washington asked § 87(2)(b) for his license and registration, which he provided. PO Leroy approached the passenger's side of the car. PO Washington asked § 87(2)(b) to exit the car, and he asked why. PO Washington responded that their music was too loud, and then § 87(2)(b) exited the car. The music was playing at a normal volume, through the car's stock speakers. PO Washington took § 87(2)(b) to the back of the car. PO Leroy then told § 87(2)(b) to turn down the music and get out of the car. § 87(2)(b) asked why they were being stopped, and PO Leroy did not respond.

PO Leroy asked § 87(2)(b) "Do you have anything on you?" and § 87(2)(b) responded that he did not have anything on him, because he had just come from a basketball game. Then PO Leroy said, "I'm not looking for any weed, but do you have any weed on you?" PO Leroy also said that there had just been an incident in the Queensbridge Houses, involving someone with a gun. § 87(2)(b) said that he did not have any weed, and PO Leroy asked him again to get out of the car. § 87(2)(b) took his wallet, phone and keys out of his sweatpants, and placed them in the center console compartment of the car, next to the cup holders. After that, he exited the car. Sometime before this, § 87(2)(b) was taken out of the car by PO Washington.

Right after § 87(2)(b) stepped out of the car, PO Leroy placed his hands on the outside of § 87(2)(b)'s pockets, and squeezed them. Then PO Leroy ran his hands over the outside of § 87(2)(b)'s clothes around his waist, and then around his ankles, and the sides of his torso. PO Leroy did not enter § 87(2)(b)'s pockets. PO Leroy then instructed § 87(2)(b) to go to the back of the car, which he did. § 87(2)(b) and § 87(2)(b) were already at the back of the car when § 87(2)(b) arrived. He had not seen what had happened with them in between them being removed from the car and seeing them at the rear of the vehicle.

§ 87(2)(b) faced PO Washington with his back to the car, but occasionally turned around to see what PO Leroy was doing. He saw PO Leroy leaning into the vehicle through the front passenger side door, with his knee on the seat. He could not see what PO Leroy was doing with his hands, and did not see him touch anything. He was looking around with his flashlight. § 87(2)(b) yelled for PO Leroy to get out of the car. PO Leroy told § 87(2)(b) not to give him attitude. § 87(2)(b) did not see PO Leroy enter through any other car doors, and never saw him in the back seat.

When they got back into the car, § 87(2)(b) noticed that his wallet was missing. He did not notice that anything else in the car had been moved. PO Washington came up to him as he was seated in the passenger's seat, and asked for his name, which § 87(2)(b) provided. § 87(2)(b) said that he did not want to give his name. After that, the officers left and § 87(2)(b) and § 87(2)(b) drove away.

None of the men were issued any summonses. § 87(2)(b) later heard that there had been a shooting in the Queensbridge Houses on the night of the incident.

**Victim:** § 87(2)(b)

- § 87(2)(b) is a black male, 5'11" tall, 175 lbs, with black hair and brown eyes. At the time of the incident, he was § 87(2)(b) old and § 87(2)(b)

**CCRB Statement**

On September 17, 2013, § 87(2)(b) was interviewed at the CCRB (encl. B 11-16), and he answered follow up questions on June 19, 2014, (encl. B 17). § 87(2)(g)

§ 87(2)(b) car does not have tinted windows, and everything in the vehicle is in working order. The car had tinted windows; however, they had been removed prior to the incident. § 87(2)(b) was wearing navy blue sweatpants, black and white slippers, and a white t-shirt. § 87(2)(b) was wearing sweatpants.

After § 87(2)(b) provided his license and registration, PO Washington and PO Leroy went back to their car for a short time, and then returned. PO Washington told them that she saw them leave the store, and that there was a shooting near the Queensbridge Houses. § 87(2)(b) asked if they had been following him, and she said that she had, because they were suspicious. After that, PO Washington told § 87(2)(b) to step out of the car.

§ 87(2)(b) stepped out of the car, and walked with PO Washington to the back of his car. PO Washington patted down the front of § 87(2)(b) chest, then down his sides and down his legs. PO Washington never entered any of § 87(2)(b) pockets, or lifted up his clothing.

PO Leroy was on the passenger side of the car, and he was not saying anything. § 87(2)(b) and § 87(2)(b) came to the back of the car, and PO Washington frisked them as well. She frisked § 87(2)(b) first. § 87(2)(b) did not watch the frisks, and could not describe them.

PO Leroy searched the car, starting at the back seat on the passenger side. PO Leroy had both feet and his whole body inside the car, and appeared to be looking around on the floor and under the seats. § 87(2)(b) attention was diverted by PO Washington, and he turned away from the car. Shortly afterwards, § 87(2)(b) turned around and saw PO Leroy in the driver's seat, with one foot

outside the car and the rest of his body inside. PO Leroy opened the center console compartment, moved the visor, and then reached over to the glove compartment and opened that as well.

§ 87(2)(b) did not notice that anything in the car had been moved; however, after crossing the Roosevelt Bridge, he realized that \$5 that he had clipped inside the mirror in the driver's seat visor was no longer there. § 87(2)(b) later told him that his wallet was missing from the car.

§ 87(2)(b) did not cooperate with attempts to obtain pictures of his vehicle and documentation showing that his window tints had been removed. On June 19, 2014, § 87(2)(b) stated that he would email pictures of his vehicle and possibly documentation for the removal of his window tints. § 87(2)(b) was sent two letters and called six additional times.

### **Attempts to Contact Civilians**

§ 87(2)(b) provided one phone number for § 87(2)(b). On November 26, 2013, a Lexis Nexis search located one address and no phone numbers for § 87(2)(b) (encl. E 3).

§ 87(2)(b) was called five times between October 16, 2013, and December 12, 2013. On October 22, 2013, § 87(2)(b) asked to be called back at a later date. On December 11, 2013, § 87(2)(b) stated that he would call on December 12, 2013, to schedule an interview; however, he did not call, and instead was called by the CCRB, and a voicemail message was left on his automated answering machine.

Two letters were mailed to § 87(2)(b)'s Lexis Nexis address (encl. F 15-16). Neither of these letters has been returned by USPS. On August 21, 2014, a search of the Department of Correction showed that § 87(2)(b) was not incarcerated. § 87(2)(b) has not contacted the CCRB.

### **NYPD Statements:**

#### **Subject Officer: PO KIMBERLY WASHINGTON**

- *PO Kimberly Washington is a black female, 5'5" tall, 205 lbs, with black hair and brown eyes. At the time of the incident, she was § 87(2)(b) old.*
- *On August 21, 2013, PO Washington worked from 9:00 p.m. the previous day to 5:35 a.m., and was assigned to Anti-Crime. She worked in plainclothes, with PO Leroy, and they were assigned to vehicle number 170, an unmarked Crown Victoria.*

### **Memo Book**

At 12:50 a.m., PO Washington conducted a car stop at 36<sup>th</sup> Avenue and Vernon Boulevard, in regards to a vehicle with windows tinted too dark. The vehicle was also seen leaving an area where a 911 call came over reporting shots fired. The males fit the description. The information of one of the individuals is given as § 87(2)(b) DOB § 87(2)(b) a black male. The vehicle was occupied by three black males, but the other two refused to provide their names or identifications. Three 250 reports were prepared for CPW (encl. C 1-3).

### **Handwritten Stop, Question and Frisk Reports**

PO Washington completed three Stop, Question and Frisk reports for the incident; One for § 87(2)(b) and two for individuals who refused to provide their names.

The individuals were observed for five minutes prior to the stop, and the stop lasted 15 minutes. All three reports list the suspected crime as criminal possession of a weapon, and the stops were based on the following circumstances: the individuals fit a description, and were seen leaving the

area of a call for possible shots fired. The report for § 87(2)(b) also lists furtive movements, and engaging in actions indicative of engaging in violent crime as circumstances leading to the stop. The report for one of the unidentified individuals also lists furtive movements as a circumstance leading to the stop.

PO Washington explained the reason for the stop. Force was used, and was described as having the suspect against a wall or car. Each suspect was frisked, but none were searched. The same reasons were given for the frisks in each report. Namely, that the suspect was engaging in actions indicative of engaging in violent crime, a violent crime was suspected, and that they were seen leaving an area where there had been a call of potential shots fired.

No contraband or weapons were found. Each report lists several factors as additional circumstances. Namely, that the individuals changed direction upon seeing the officers or fled, and that there was an ongoing investigation in progress. The report for one of the unidentified individuals, the same one for whom furtive movements is listed as a circumstance leading to the stop, lists another additional circumstance, which is that he drove through a steady red light while making a right turn from 41<sup>st</sup> Avenue onto Vernon Boulevard (encl. C 3a-3f).

#### **CCRB Statement**

On December 19, 2013, and November 20, 2014, PO Washington was interviewed at the CCRB (encl. C 4-6c).

On August 21, 2013, at approximately 12:50 a.m., PO Washington was on patrol with PO Leroy, when a call came over the radio reporting a 911 call of shots fired in the Queensbridge Houses. PO Washington was the driver of the vehicle.

A description of the suspects was provided, but PO Washington could not recall the description. The call only described the suspects; no vehicle was mentioned. It did not include the number of suspects. The 911 caller was a resident of the Queensbridge Houses, and was a passerby who heard the shots. No specific location was mentioned, just that it was in the Queensbridge Houses. PO Washington could not recall if the call was transmitted over the radio more than once.

PO Washington and PO Leroy began to canvass the area for suspects. While driving westbound on 41<sup>st</sup> Avenue shortly before Vernon Boulevard, they observed three males crossing 41<sup>st</sup> Avenue from the southern side and getting into a parked vehicle on the northern side about 41<sup>st</sup> Avenue about 50 feet away. They did not appear to be in a hurry at the time, and PO Washington found nothing unusual about the way they entered their vehicle. PO Washington's attention was first drawn to the males because they fit the description of the suspects in the shooting, and the car was parked right at the edge of the housing projects. PO Washington could not recall in what way the males fit the description of the suspects.

The vehicle pulled out of its parking spot and drove off, westward on 41<sup>st</sup> Avenue, at a normal speed: approximately five to ten miles per hour. The officers followed it. At this time, PO Washington noticed that the vehicle had dark tinted windows. All the windows with the exception of the front and rear windshields were tinted. Even so, PO Washington could see inside the car and determine the races and genders of the occupants. PO Washington could not estimate how dark the window tints were. PO Washington and PO Leroy decided to stop the vehicle after the three individuals got into the car. They discussed this decision, but PO

Washington could not recall the details of that discussion. The call came approximately 5-10 minutes before the stop.

They stopped the vehicle to determine if the individuals had a weapon and if they had anything to do with shots fired. Aside from their presence in the area, and how they fit the description, there were no other factors that led PO Washington to suspect that they were involved in the shots fired call or in possession of a weapon.

After she turned on the police lights, the vehicle made a right turn on a red light, onto Vernon Boulevard heading north. The officers followed the car with their lights on, and it stopped approximately four blocks later on Vernon Boulevard and 36<sup>th</sup> Avenue. There was ample space for the vehicle to pull over before it did. That it took the individuals four blocks to stop, made PO Washington feel that they were being evasive, and raised her suspicion that they were involved in the shooting, and possibly in possession of a weapon.

The officers stopped behind the car, and approached simultaneously; PO Washington went to the driver, and PO Leroy went to the passenger side of the car. As PO Washington approached, her attention was focused on the driver and she did not see what either of the passengers was doing. As she reached the car she saw the driver place both of his hands at the side of his body against the seat. As she spoke with the driver she could see both his hands, and saw that he was not holding anything. The driver moving his hands to the sides indicated to PO Washington that he may have been trying to push something down between the seat, or that there was something there. Because of the radio run, the fact that these individuals were in that area and fit the description, and the individual's evasive behavior, she suspected that this may have been a firearm. She decided to frisk the individuals in the car.

PO Washington asked the driver, § 87(2)(b) for his identification, and he provided it. PO Washington explained to § 87(2)(b) that they had stopped them because there had been a 911 call about shots being fired in the Queensbridge Houses, and asked him to step out of the vehicle. He complied, and PO Washington brought him to the back of the car. PO Washington's intention was to frisk all the individuals to make sure they did not have a weapon on them.

At the back of the car, PO Washington asked § 87(2)(b) if she could frisk him for a weapon. PO Washington could not see § 87(2)(b) waistband, because he had clothing hanging over it. She did not notice anything about § 87(2)(b) that led her to believe that a weapon was hidden in his waistband area, and could not see any bulges in this area. The waistband area is a common place to hide weapons.

§ 87(2)(b) consented, and PO Washington frisked his waistband. Nothing was found during the frisk. After § 87(2)(b) was frisked, PO Leroy asked the other individuals inside of the car to exit and go to the back of the car, and they both complied. PO Leroy may have been speaking with these individuals; however, PO Washington was not certain and could not recall anything that was said, as PO Leroy was on the other side of the car and she was not paying attention to him.

At the back of the car, PO Washington explained that they had received a call of shots fired and asked § 87(2)(b) and § 87(2)(b) if she could frisk them. PO Washington did not notice anything about § 87(2)(b) or § 87(2)(b)'s clothing that indicated that they were concealing a weapon, and she did not see any bulges in their waistbands; however, like § 87(2)(b) they had clothing hanging over their waistbands.

Both men consented, and PO Washington frisked their waistbands. Neither raised any objections to being frisked; however, one of them became irate during the frisk, and afterwards complained that he was always getting stopped by the police. This individual was irate in that his voice was elevated and he was questioning the officers. He was not waving his arms; he had them crossed in front of his body.

As PO Washington frisked the men, PO Leroy searched the car. PO Leroy did not discuss searching the car with PO Washington, and never informed her of his reasons for searching the car. PO Washington did not watch, and could not say what specific parts of the car PO Leroy searched. She saw him enter the car through the front passenger side door, and then exit the car, go around to the driver's side, and enter the car through both the front and back doors. PO Leroy did not find anything during the search.

PO Washington asked § 87(2)(b) and § 87(2)(b) for their identification, but they both refused.

The officers released the males, and they left the area. PO Washington used her discretion not to issue them a summons for the window tints or the traffic infractions. She did not have any particular reason for not issuing a summons in this case.

The furtive movements listed on the Stop, Question, and Frisk report for the driver referred to his placing his hands at his sides. The furtive movements noted on one of the additional reports are in reference to the individuals getting into their car and leaving the area of the shots fired. Actions indicative of engaging in violent crime was noted in reference to the individuals being in the area of the shots fired call.

**Subject Officer: PO PHILLIP LEROY**

- *PO Phillip Leroy is a black male, 6' tall, 180 lbs, with black hair and brown eyes. At the time of the incident, he was § 87(2)(b) old.*
- *On August 21, 2013, PO Leroy worked from 9:00 p.m. the previous day, to 5:35 a.m., and was assigned to Anti-Crime. He worked in plainclothes, with PO Washington and they were assigned to vehicle number 171.*

**Memo Book**

At 12:50 a.m., PO Leroy stopped a car at 36<sup>th</sup> Avenue and Vernon Boulevard, in regards to a vehicle with dark tinted windows. The vehicle was also stopped because the vehicle was seen leaving an area where a 911 call had reported shots fired. The males fit the description. § 87(2)(b) (DOB § 87(2)(b)) was the driver. There were three black males in the vehicle, and the other two refused to provide pedigree information. The two male passengers were very uncooperative during the stop. The officers explained the reason for the stop and they refused to understand why. They expressed that they will not listen to officers orders and were pulled over for no reason, and had an attitude. The car stop was closed at 10-91, non-crime corrected (encl. C 7-9).

**CCRB Statement**

On December 19, 2013, and November 20, 2014, PO Leroy was interviewed at the CCRB (encl. C 10-14). § 87(2)(g)



The call that had come over the radio reported that shots had been fired by three black males. The report came from a 911 call, and it had not been confirmed by the police yet. PO Leroy could not recall any information about the caller, and was unsure if any was transmitted. No further description of the suspects was given. PO Leroy believed that a description of the suspects' car was given, and that it said the car was black and had tinted windows, but he was not certain. PO Leroy believed that the call mentioned a direction of flight, but was not certain and could not recall what it was.

PO Leroy first observed the car as it drove through a red light at the intersection of 40<sup>th</sup> Avenue and Vernon Boulevard. As they followed the vehicle after it turned onto Vernon Boulevard, it slowed down as if to stop, but then sped up again. The vehicle did this at least two times. The vehicle had plenty of space to pull over before it eventually stopped. PO Leroy could not recall how fast the vehicle was travelling. All the windows of the car were too tinted to see through, and he could not tell how many people were inside. After seeing the car drive through the red light, they turned on their lights and sirens to pull the car over. The car did not stop for several blocks, until the intersection of 36<sup>th</sup> Avenue and Vernon Boulevard.

PO Leroy believed that individuals in the car were related to the shooting because their vehicle was in the same area as the reported shooting, and matched the description in the radio call, in that it was black and had tinted windows. Additionally, the car had gone through a red light and had not stopped immediately when they turned on their lights and sirens, which indicated to PO Leroy that they were trying to flee the area. PO Leroy and PO Washington discussed these observations as they followed the car.

As PO Leroy approached the vehicle he noticed that there were three black males moving around inside which raised his suspicion that they were involved in the shooting. He could not describe these movements because, due to the tints, he could only see the outlines of the figures inside. The movements lasted from the time the vehicle stopped to the time that PO Leroy reached the vehicle. These movements indicated that the individuals could have been hiding something. PO Leroy instructed the occupants to place their hands in front of them, and asked § 87(2)(b) to exit the vehicle. § 87(2)(b) said, "No. For what?" PO Leroy explained the call of shots fired, and § 87(2)(b) exited. As he exited, PO Leroy noticed a bulge on his waistband, beneath his shirt. In his interview on November 20, 2014, PO Leroy said that he did not notice the bulge until later, when he felt it during the frisk.

PO Leroy asked § 87(2)(b) "Is there anything on you that could hurt me or stick me?" and he replied, "No." PO Leroy asked him, "What's that?" pointing to the bulge and he said, "It's my cell phone." PO Leroy lifted up § 87(2)(b)'s shirt, and saw a cell phone clipped to the outside of his pants.

PO Leroy frisked § 87(2)(b)'s waistband and underneath his arms because these are areas where people hide firearms, and because he suspected § 87(2)(b) of being involved in the shots fired call. PO Leroy had no other reasons for suspecting that any of the individuals had a firearm hidden in their clothing. PO Leroy did not see any bulges in § 87(2)(b)'s clothing, aside from the one made by his cell phone.

As PO Leroy frisked § 87(2)(b) § 87(2)(b) said, "I don't have anything on me. Why are you touching me?" PO Leroy referenced the 911 call regarding shots fired in the area, and said

that he needed to make sure § 87(2)(b) did not have anything on him that could threaten their safety.

PO Leroy believed that there could have been a weapon in the reachable area of the car because of the radio run, the suspects' evasive behavior, and their movements inside the car. He checked the reachable area to make sure that there was no firearm in the car. There were occupants in the driver's seat, passenger's seat, and in the back seat on the passenger side, so the search of the lungeable area extended to these three seats. PO Leroy looked into the car, leaning into the open doors and looking around the floor and seats with his flashlight, in both the front seats and the back seat on the passenger side. He did not touch anything in the car, and did not get fully into the car during the search; he just walked on both sides of the car, and stuck his head in through the doors, which were all open. He did not touch anything inside the car. He did not find anything during the search.

PO Leroy heard the individuals arguing with PO Washington at the back of the car, and so he went to the back of the car. PO Leroy believed that § 87(2)(b) and § 87(2)(b) were frisked as well; however he could not recall when, or whether it was by him or PO Washington.

PO Leroy and PO Washington released the males. They did not issue a summons for the traffic infractions because, as Anti-Crime officers, they do not issue summonses for violations. PO Leroy did not know how the shots fired call was ultimately resolved.

The "furtive movements" noted on the Stop, Question, and Frisk reports was most likely checked because of the individuals moving around in the car, and "actions indicative of engaging in a violent crime" was most likely checked because of the males presence in the area after the radio run. "Changing direction on sight of officers" was most likely in reference to the individuals slowing down and speeding up as the officers followed them.

### **Other Evidence**

#### **911 call #1**

The first 911 call related to the incident is 1:54 minutes long. The unidentified caller, a male, states that he is at § 87(2)(b) § 87(2)(b), and that there is an altercation in the building. He says that there is an argument with a woman and her brother, and that they have guns. He says that he lives in apartment § 87(2)(b), and repeats that there is a family altercation in progress. He then states that the dispute involves a brother and sister who both have guns and are in front of § 87(2)(b) at the time of the call. He states that he saw the gun, and that the person with the gun is tall, slim, and brown skinned. Then the caller hangs up.

#### **911 call #2**

The second 911 call related to the incident is 1:33 minutes long. The caller is the same individual as in the first call. He states that there are two people in front § 87(2)(b) § 87(2)(b), banging on his window, and one of them has a gun. The caller identifies himself as § 87(2)(b) and says that he is on the § 87(2)(f) floor in the hallway. § 87(2)(f)

§ 87(2)(f) tall, brown-skinned, and thin, and says he is wearing a white t-shirt and green pants. He then says § 87(2)(g) has a gun, and that he is going out to approach her. He describes her as wearing a white shirt and black pants, and with a pony tail. The caller states that § 87(2)(b) is black, and then hangs up.

### **911 call #3**

The third 911 call related to the incident is 2:13 minutes long. The caller is female, and she says that someone is trying to jump her son who is disabled. She states that it is happening in front of § 87(2)(b), and that she is on § 87(2)(b), leaving her home on § 87(2)(b), on her way there. She says that she just got a call that a brother and sister were trying to jump her son. She says that she has no idea if there are weapons involved or any injuries, but says that her son has a rod in his leg. She identifies herself as § 87(2)(b) and provides her home telephone number.

### **911 call #4**

The fourth 911 call related to the incident is 52 seconds long. It is the same caller as the first two 911 calls. He stated that a gunshot just went off in front of § 87(2)(b), and states that a tall, dark skinned, thin male is running with a gun. He says that he does not know what this male is wearing. He states that a woman who is with the male is wearing a gray shirt and white pants, and has a pony tail.

### **Events**

Five duplicate Events were created regarding a report of a shooting at § 87(2)(b) Vernon Boulevard, in the Queensbridge North Houses. They describe several 911 calls from various witnesses who reported a family dispute with guns at approximately 11:15 p.m. on August 20, 2013.

At approximately 11:15 p.m., the central dispatcher gives the location of the incident as § 87(2)(b) and states that a 911 caller stated that there were two § 87(2)(b) with firearms at the location. The dispatcher stated that the incident is also being reported as a dispute with a knife. The housing Anti-Crime sergeant and a housing conditions unit go over the radio and transmits that he is responding to the location.

At 11:18 p.m. the central dispatcher states that there are possible shots fired at the same location. At 11:19 p.m., the dispatcher provides two descriptions of the suspects: one of a tall and slim dark skinned male, and one of a female wearing a white t-shirt and black pants with a pony tail. No direction of flight was given.

At 11:22 p.m., the housing anti-crime sergeant requests that no more officers respond to the location and that there were no shots fired and the incident is a non-emergency. The Events were closed at different times, but all were closed by 12:23 a.m., as either unnecessary, or as a domestic incident report (encl. D 1-21).

### **Status of Civil Proceedings**

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of February 10, 2014, with regard to the incident (encl. E 5).

### **Civilians Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilians CCRB History**

- § 87(2)(b) and § 87(2)(b) have not filed any prior CCRB complaints (encl. A 4-5).
- § 87(2)(b) has filed the following CCRB complaint:

- § 87(2)(b)

### **Subject Officers CCRB History**

- PO Washington has been a member of the service for 13 years and there are no substantiated CCRB allegations against her (encl. A 1).
- PO Leroy has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. A 2).

### **Conclusion**

### **Identification of Subject Officers**

PO Washington and PO Leroy confirmed that they interacted with § 87(2)(b) and § 87(2)(b)

### **Investigative Findings and Recommendations**

#### **Allegations not pled**

§ 87(2)(g)

#### **Allegation A – Abuse of Authority: PO Kimberly Washington stopped the car in which**

§ 87(2)(b) and § 87(2)(b) were occupants.

#### **Allegation B – Abuse of Authority: PO Phillip Leroy stopped the car in which**

§ 87(2)(b) and § 87(2)(b) were occupants.

PO Washington and PO Leroy stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants. § 87(2)(b) and § 87(2)(b) stated that PO Washington and PO Leroy pulled them over as they were turning onto the Roosevelt Island Bridge, after driving past the Queensbridge North Houses, on 40<sup>th</sup> Avenue.

§ 87(2)(b) and § 87(2)(b) denied that § 87(2)(b) committed any traffic infractions or that his vehicle had tinted windows. They stated that § 87(2)(b) had the tints on his windows removed prior to the incident. § 87(2)(b) did not cooperate with attempts to obtain pictures of his vehicle or documentation regarding the tint removal. § 87(2)(b) did not cooperate with the investigation.

PO Washington and PO Leroy stated that they stopped the men in connection with a recent 911 call about a shooting, and because they committed a traffic infraction and had tinted windows. Both noted that the car had tinted windows in their memo books and stated the § 87(2)(b) drove through a red light. They did not issue summonses for either violation.

PO Leroy said that they first saw § 87(2)(b) car when it ran a red light, and that the shots fired report described three suspects and their vehicle. PO Leroy, however, stated that he did not know there were three people in the car until he approached, as the window tints were too dark to see through. PO Washington said that they first observed the men when they entered their vehicle, but the call did not report the number of suspects or describe a vehicle. PO Washington stated that § 87(2)(b) and § 87(2)(b) fit the description of the suspect(s), but could not recall how.

There were several 911 calls of shots fired in area in the hours before the incident. However, the calls were closed approximately 30 minutes before the stop, and prior to that it had been reported that the report was erroneous. The suspects were described as a male and female and the call made no mention of the suspects fleeing in a vehicle. Therefore, the investigation does not credit that the call of shots fired justified the stop in this case.

The police may lawfully stop a vehicle for a traffic infraction of excessively tinted windows (V.T.L., Article 9 §375 (12A)) (encl. x-xi).

§ 87(2)(g)

**Allegation C – Abuse of Authority: PO Phillip Leroy frisked § 87(2)(b)**

PO Leroy frisked § 87(2)(b). According to § 87(2)(b), PO Leroy patted down the outside of his pants pockets, his waistband, and his legs.

PO Leroy acknowledged frisking § 87(2)(b)'s waistband and underarm area because firearms are commonly concealed in these areas. PO Leroy suspected that § 87(2)(b) and § 87(2)(b) were possibly involved in the call of shots fired because of their proximity, and since they were three black men in a black car with tinted windows which matched the description provided over the radio. Additionally, PO Leroy stated that the men ran a red light and did not immediately stop for the officers, and that the individuals made movements inside the car that he could not see in detail due to the window tints.

A frisk is permissible when the police possess a particularized reasonable suspicion that the suspect is armed and dangerous. People v. Michael H., 43 Misc.3d 1208(A) (Crim. Ct. Kings Cty. 2014) (encl. v-vii); People v. Forrest, 77 A.D.3d 511 (App. Div. 1<sup>st</sup> Dep't. 2010) (encl. iv)

§ 87(2)(g)

PO Leroy acknowledged that there was no indication that § 87(2)(b) was hiding a weapon in the areas frisked, aside from a bulge on § 87(2)(b)'s waistband which PO Leroy determined was a cell phone prior to frisking him. § 87(2)(g)

§ 87(2)(g)

**Allegation D – Abuse of Authority: PO Kimberly Washington frisked § 87(2)(b) and**

§ 87(2)(b)

PO Washington frisked § 87(2)(b) and § 87(2)(b). PO Washington stated that she obtained consent from § 87(2)(b) and § 87(2)(b) to frisk them. She frisked their waistbands; as this is a place people commonly conceal weapons. One of the males became irate while being frisked.

§ 87(2)(g)  
§ 87(2)(b) did not state that PO Washington requested or obtained consent to frisk him. Also, PO Leroy documented in his memo book that two of the passengers were very uncooperative. § 87(2)(g)

A frisk is permissible when the police possess a particularized reasonable suspicion that the suspect is armed and dangerous. People v. Michael H., 43 Misc.3d 1208(A) (Crim. Ct. Kings Cty. 2014) (encl. v-vii); People v. Forrest, 77 A.D.3d 511 (App. Div. 1<sup>st</sup> Dep't. 2010) (encl. iv)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Abuse of Authority: PO Phillip Leroy searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

PO Leroy searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. PO Leroy leaned into the car to look for a weapon in the lungeable area: under and around each seat where someone had been sitting. PO Leroy believed that there could have been a weapon in the reachable area of the car because of the call of shots fired, the suspects' evasive behavior, and their movements inside the car.

Under the automobile exception to the warrant requirement, a warrantless search of a vehicle is permitted when the police have probable cause to believe the vehicle contains contraband, a weapon, or evidence of a crim. People v. Baksh, 2014 N.Y. App. Div. Lexis 112 (App. Div. 2<sup>nd</sup> Dep't. 2014) (encl. i-iii). A limited warrantless search is also permitted when there is a substantial likelihood of a weapon in the car, which presents an actual and specific danger to the officers' safety.

§ 87(2)(g)

§ 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date